

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA-R09-2007-OAR-1109; FRL- XXXX-x]

Determination of Nonattainment and Reclassification of the
Imperial County, 8-hour Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule finalizes EPA's finding of nonattainment and reclassification of the Imperial County 8-hour ozone nonattainment area (Imperial County). EPA finds that Imperial County has failed to attain the 8-hour ozone national ambient air quality standard ("NAAQS" or "standard") by June 15, 2007, the attainment deadline set forth in the Clean Air Act (CAA) and Code of Federal Regulations (CFR) for marginal nonattainment areas. As a result, on the effective date of this rule, Imperial County will be reclassified by operation of law as a moderate 8-hour ozone nonattainment area. The moderate area attainment date for the reclassified Imperial County will be "as expeditiously as practicable," but no later than June 15, 2010. Once reclassified, California must submit State Implementation Plan (SIP) revisions that meet the 8-hour ozone nonattainment requirements for moderate areas, as required by the CAA. EPA has

determined that the State must submit these SIP revisions by December 31, 2008.

EFFECTIVE DATE: [Insert date 30 days from date of publication in the Federal Register].

ADDRESSES: EPA has established docket number EPA-R09-2007-OAR-1109 for this action. The index to the docket is available electronically at <http://www.regulations.gov> and in hard copy at U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901. While documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., Confidential Business Information). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the FOR FURTHER INFORMATION CONTACT section.

FOR FURTHER INFORMATION CONTACT: Adrienne Priselac, EPA Region IX, (415) 972-3285, priselac.adrienne@epa.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. What is the background for this action?
- II. Response to comments
- III. What is the effect of this action?

- A. Determination of nonattainment, reclassification of Imperial County nonattainment area and new attainment date
- B. Date for submitting a revised SIP for the Imperial County area
- IV. Final action
- V. Statutory and Executive Order reviews

I. What is the background for this action?

On November 23, 2007, EPA published its proposed finding that Imperial County did not attain the 8-hour ozone NAAQS by June 15, 2007, the applicable attainment date (72 FR 65682). The proposed finding was based upon ambient air quality data from the years 2004, 2005, and 2006. In addition, as explained in the proposed rule, the area did not qualify for an attainment date extension under the provisions of CAA section 181(a)(5) and 40 CFR 51.907, because the 4th highest daily value in the attainment year was greater than 0.084 ppm. In the November 23, 2007 proposal, EPA proposed that the area would be reclassified by operation of law to "moderate" nonattainment, in accordance with CAA section 181(b)(2).

II. Response to comments

EPA published its proposed rule on November 23, 2007, and provided an opportunity for public comment. The public comment

period ended on December 24, 2007. EPA received no comments. No further opportunity for public comment will be provided.

III. What is the effect of this action?

A. Determination of nonattainment, reclassification of Imperial County and new attainment date

Pursuant to section 181(b)(2), EPA finds that Imperial County failed to attain the 8-hour ozone NAAQS by the June 15, 2007, attainment deadline prescribed under the CAA (69 FR 23858, April 30, 2004 and 40 CFR 51.903(a)) for marginal ozone nonattainment areas. When this finding becomes effective, Imperial County will be reclassified by operation of law from marginal nonattainment to moderate nonattainment. The reclassification to the next higher classification is mandated by section 181(b)(2)(A) of the CAA. (see the discussion in the proposal at 72 FR 65684) Moderate areas are required to attain the standard "as expeditiously as practicable" but no later than 6 years after designation or June 15, 2010. The "as expeditiously as practicable" attainment date will be determined as part of the action on the required SIP submittal demonstrating attainment of the 8-hour ozone standard. Also in this action, EPA is finalizing its proposal establishing a schedule by which California will submit the SIP revisions

necessary to meet the requirements for areas reclassified to moderate nonattainment of the 8-hour ozone standard.

B. Date for submitting a revised SIP for the Imperial County area

In its proposal, EPA addressed the schedule by which California is required to submit a revised SIP meeting the requirements for the Imperial County moderate nonattainment area. When an area is reclassified, EPA has the authority under section 182(i) of the CAA to adjust the CAA's submittal deadlines for any new SIP revisions that are required as a result of the reclassification.

Pursuant to 40 CFR 51.908(d), for each nonattainment area, a state must provide for implementation of all control measures needed for attainment no later than the beginning of the attainment year ozone season. The attainment year ozone season is the ozone season immediately preceding a nonattainment area's attainment date, in this case 2009 (40 CFR 51.900(g)). The ozone season is the ozone monitoring season as defined in 40 CFR Part 58, Appendix D, section 4.1, Table D-3 (71 FR 61236, October 17, 2006). For the purposes of this reclassification for Imperial County, January 1, 2009, is the beginning of the ozone monitoring season. As a result, EPA is finalizing its proposal requiring that the required SIP revisions be submitted by California as expeditiously as practicable, but no later than

December 31, 2008. This timeline also calls for implementation of applicable controls no later than January 1, 2009.

The area was previously required to submit the requirements for marginal areas, and under section 182(b) remains required to meet them, and now must meet the requirements for moderate areas as well.

A revised SIP must include the following moderate area requirements: (1) an attainment demonstration (40 CFR 51.908), (2) provisions for reasonably available control technology and reasonably available control measures (40 CFR 51.912), (3) reasonable further progress reductions in emissions (40 CFR 51.910), (4) contingency measures to be implemented in the event of failure to meet a milestone or attain the standard (CAA 172(c)(9)), and (5) NOx and VOC emission offsets of 1.15 to 1 for major source permits (40 CFR 51.165(a)). See also the requirements for moderate ozone nonattainment areas set forth in CAA section 182(b).¹

IV. Final action

Pursuant to CAA section 181(b)(2), EPA is making a final determination that the Imperial County "marginal" 8-hour ozone nonattainment area failed to attain the 8-hour ozone NAAQS by

¹ A vehicle inspection and maintenance (I/M) program would normally be listed as a requirement for an ozone moderate or above nonattainment area. However, the Federal I/M Flexibility Amendments of 1995 determined that urbanized areas with populations less than 200,000 for 1990 are not mandated to participate in the I/M program (60 FR 48027, September 18, 1995).

June 15, 2007. Upon the effective date of this rule, the Imperial County "marginal" 8-hour ozone nonattainment area will be reclassified by operation of law as a "moderate" 8-hour ozone nonattainment area. Pursuant to section 182(i) of the CAA, EPA is establishing the schedule for submittal of the SIP revisions required for moderate areas once the area is reclassified. The required SIP revision for California must be submitted as expeditiously as practicable, but no later than December 31, 2008.

V. Statutory and Executive Order reviews

A. Executive Order 12866, Regulatory Planning and Review

This action is not a "significant regulatory action" under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), entitled "Regulatory Planning and Review" and is therefore not subject to review under the EO. The Agency has determined that the finding of nonattainment would result in none of the effects identified in the Executive Order. Under Section 181(b)(2) of the CAA, determinations of nonattainment are based upon air quality considerations and the resulting reclassifications must occur by operation of law.

B. Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities. Determinations of nonattainment and the resulting reclassification of nonattainment areas by operation of law under section 181(b)(2) of the CAA do not in and of themselves create any new requirements. Instead, this rulemaking makes a factual determination, and does not directly regulate any entities. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act" or "UMRA"), signed into law on

March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that this rulemaking action does not include a Federal mandate within the meaning of UMRA that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. Also, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments and therefore is not subject to the requirements of section 203. EPA believes that the finding of nonattainment is a factual determination based upon air quality considerations and that the resulting reclassification of the area must occur by operation of law. Therefore EPA believes that the finding does not constitute a Federal mandate, as defined in section 101 of the UMRA, because it does not impose an enforceable duty on any entity.

E. Executive Order 13132, Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and

local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action merely determines that the Imperial County area has not attained by its applicable attainment date, reclassifies the Imperial County area as a moderate ozone nonattainment area, and adjusts applicable deadlines. It does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This final rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the

relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This action is not subject to Executive Order 13045 because it is not economically significant as defined in E.O. 12866, and because the Agency does not have reason to believe the environmental health risks or safety risks addressed by this rule present a disproportionate risk to children. This action merely determines that the Imperial Valley area has not attained the standard by the applicable attainment date, reclassifies the

Imperial Valley area as a moderate ozone nonattainment area, and adjusts applicable deadlines.

H. Executive Order 13211, Actions that Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS. This action merely determines that the Imperial County area has not attained by the applicable attainment date, reclassifies the Imperial County area as a moderate ozone nonattainment area, and adjusts applicable

deadlines. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. section 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. section 804(2). This rule will be effective [FEDERAL REGISTER OFFICE: insert date 30 days from date of publication of this document in the Federal Register].

K. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for

reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements.

(See section 307(b) (2).)

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control

Authority: 42 U.S.C. 7401 et seq.

Dated: _____

Wayne Nastri,
Regional Administrator,
EPA Region IX.

Part 81 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 81--[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

2. In Sec. 81.305 the "California-Ozone (8-Hour Standard)" table is amended by revising the entry for "Imperial County:" to read as follows:

Sec. 81.305 California.

California--Ozone (8-Hour Standard)

Designated Area	Designation		Classification	
	Date ¹	Type	Date	Classification
Imperial County, CA: Imperial County		Nonattainment	[<u>FEDERAL REGISTER OFFICE: insert date 30 days from date of publication of this document in the Federal Register</u>]	Subpart 2 /Moderate

¹ This date is June 15, 2004, unless otherwise noted.